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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DEREK CHRISTOPHER ADAMS,

Petitioner,

v.

J. BEARD,

Respondent.

Case No. SACV 15-00625-FMO (KK)

**ORDER ACCEPTING FINDINGS
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all of the records herein, the Magistrate Judge's Report and Recommendation, and the Objections to the Report and Recommendation. Having made a de novo determination of the portions of the Report and Recommendation to which the Objections were directed, the Court concurs with and accepts the findings and conclusions of the Magistrate Judge.

In his Petition and Traverse, Petitioner requests an evidentiary hearing. However, in habeas proceedings, "an evidentiary hearing is not required on issues that can be resolved by reference to the state court record." Totten v. Merkle, 137 F.3d 1172, 1176 (9th Cir. 1998); see also Earp v. Ornoski, 431 F.3d 1158, 1173 (9th Cir. 2005). "It is axiomatic that when issues can be resolved with reference to the state court record, an evidentiary hearing becomes nothing more than a futile exercise."

1 Totten, 137 F.3d at 1176. Here, the Magistrate Judge concluded all of Petitioner's
2 claims could be resolved by reference to the state court record. Accordingly, the Court
3 denies Petitioner's request for an evidentiary hearing.

4 IT IS THEREFORE ORDERED that Judgment be entered (1) denying the Petition
5 for a Writ of Habeas Corpus; and (2) dismissing this action with prejudice.

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7 Dated: October 6, 2015

8 _____/s/_____
9 HONORABLE FERNANDO M. OLGUIN
10 UNITED STATES DISTRICT JUDGE
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